

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-2880-00

MAKnospe

date:

to: Appeals Office, New England District, Boston
Attn: William Kyrouz

from: District Counsel, New England District, Boston

subject: [REDACTED] Form 872

EIN: [REDACTED]
Statute of Limitations Expires [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is in response to your request for advice regarding extending the statute of limitations for taxpayer [REDACTED] with respect to the consolidated group's taxable years [REDACTED], [REDACTED] and [REDACTED].

ISSUE

Under the described circumstances, where the parent corporation of an affiliated group has become a subsidiary of a new holding company, what language should be included on a Form 872 for the consolidated group and by whom should the form be signed?

CONCLUSION

Pursuant to the provisions of Temporary Regulation § 1.1502-77T(a)(4)(i), and based upon the facts stated, the Service should obtain a Form 872 from [REDACTED], the common parent of the consolidated group during the taxable years [REDACTED], [REDACTED] and [REDACTED].

FACTS

[REDACTED] is organized as a Massachusetts business trust, an unincorporated business organization with transferable shares. Entities formed as Massachusetts business trusts rather than corporations benefit from potential Massachusetts income tax savings accorded trusts and the lower filing fees payable by a trust in connection with its authorized capital stock.

[REDACTED] was the parent of an affiliated group which filed consolidated federal income tax returns for the taxable years [REDACTED], [REDACTED] and [REDACTED]. During the taxable years [REDACTED], [REDACTED] and [REDACTED], [REDACTED] had [REDACTED] subsidiaries, including [REDACTED] operating [REDACTED] companies and several subsidiaries engaged in other business, such as [REDACTED]

[REDACTED] serving several [REDACTED] area hospitals.

[REDACTED] is also organized as a Massachusetts business trust, an unincorporated business organization with transferable shares and conducts its business through its operating subsidiaries. [REDACTED]'s principal subsidiaries are [REDACTED], a [REDACTED] company and [REDACTED]. [REDACTED] also engages in a number of [REDACTED] businesses, including [REDACTED] through a joint venture with [REDACTED], and the [REDACTED].

██████ was organized on ████████ as a Massachusetts business trust with transferable shares to be the new holding company for ████████ and ████████. Prior to the merger, ████████ and ████████ together owned all of ████████'s outstanding common shares. As the result of the ████████ merger, ████████ and ████████ became subsidiaries of ████████, the holding company for the combined businesses. This was accomplished by the merger of acquisition subsidiaries of ████████ into each of ████████ and ████████ with ████████ and ████████ as the surviving companies. The shareholders of each of ████████ and ████████ had the option to elect to receive shares of ████████ or cash for the shares of ████████ or ████████ they held prior to the merger. The subsidiaries of ████████ prior to the merger remain subsidiaries of ████████.

The Office of Appeals for the New England District is currently considering the consolidated returns for ████████ and ████████ for the taxable years ████████, ████████ and ████████, and has requested our advice with respect to a Form 872 to extend the statute of limitations for the consolidated group for those years.

DISCUSSION

Generally the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77 shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temporary Regulation § 1.1502-77T(a)(4) provides for agents if the common parent ceases to be the common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulation § 1.1502-77T(a)(4)(i), an agent for the group is "[t]he common parent of the group for all or any part of the year to which the notice or waiver applies." Temporary Regulation § 1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp. Reg. § 1.1502-77T(b). Therefore, said regulation provision is applicable in this case.

In this case the common parent taxpayer, [REDACTED], is still in existence and, therefore, is the agent for the consolidated group in existence in [REDACTED], [REDACTED] and [REDACTED] under the provisions of Temporary Regulation § 1.1502-77T(a)(4)(i). Therefore, based on the facts provided, we conclude that the Form 872 should be executed by a current officer of [REDACTED]. The caption on the Form 872 should be [REDACTED]. At the bottom of the page you should add, by way of explanation, the following statement: * With regard to the consolidated tax liability of the [REDACTED] consolidated group for the group's [REDACTED] and [REDACTED] taxable years.

Since there appears to be no further action to be taken by our office we have marked our file in this case closed. There are no administrative files to be returned to your office. If there are any questions, you may contact Marvis A. Knospe at (617)565-7914.

GERALD J. O'TOOLE
District Counsel

By: _____

DAVID N. BRODSKY
Assistant District Counsel